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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,
Petitioners,

VS.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

I

THE RESPONDENT HAS NOT ESTABLISHED EITHER STATUTORY OR LEGISLATIVE HISTORY WHICH OVERCOMES THE CLEAR LANGUAGE OF § 3692.

A. A Preliminary Analysis of the Respondent's Position.

The respondent's argument consists of a bootstrapping analysis with respect to the legislative and statutory history of statutes involved in this case. The clear and unambiguous language of the statute upon

which petitioners rely is not directly challenged by respondent. Res. Brief, p. 32. Nor is petitioners' assertion that settled rules of construction are applicable to this criminal statute, guaranteeing fundamental rights challenged. Rather, by focusing on exactly those statutory and legislative materials which are employed to construe an unclear or doubtful statute, respondent asserts that such material must necessarily be employed to discern the true intent of Congress with respect to the statute involved. Respondent attempts to create an ambiguity in § 3692 by referring to legislative materials, because the respondent is unable to assert any contradictory meaning in § 3692, any conflict with other statutes, or that the plain meaning would lead to a totally unintended result. By settled principles of statutory interpretation, those materials relied upon by respondent are not focused upon by the courts *until* some intrinsic aspect of the statute forces such resort to those extrinsic materials. Petitioners assert no such analysis is requisite.[1] *Ex parte Collett,* 337 U.S. 55, 61, n. 12 (1949).

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[1]In *Cass v. United States,* 417 U.S. 72 (1974), Res. Brief, p. 32, this Court resorted to legislative material to resolve an internal inconsistency within the statutory provision. 10 U.S.C. § 687(a). *Cf. United States v. Oregon,* 366 U.S. 643, 648 (1961):

> "Having concluded that the provisions of § 1 are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act. Since the State has placed such a reliance upon that history, however, we do deem it appropriate to point out that the history is at best inconclusive." (fn. omitted).

Petitioners assert that these cases govern: this Court need not consider any statutory or legislative history when faced with this unequivocal statute.

B. The Assertion That § 3692 Must Be Restricted to Contempts of Injunctions Issued Pursuant to Norris-LaGuardia "has been the consistent conclusion of the courts which have considered the question," Res. Brief, pp. 27-28, Is Erroneous.

A summary review of those cases relied upon by respondent reveals a superficial analysis.[2] *Madden v. Grain Elevator, Flour and Feed Mill Workers,* 334 F.2d 1014 (7th Cir. 1964), *cert. denied,* 379 U.S. 967 (1965); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co.,* 380 F.2d 570 (D.C. Cir. 1967), *cert. denied,* 389 U.S. 327 (1967); *Schauffler v. Local 1291, Internat'l Longshoremen's Ass'n,* 189 F.Supp. 737 (E.D. Pa. 1960), *rev'd on other grounds,* 292 F.2d 182 (3rd Cir. 1961); and *National Labor Relations Board v. Red Arrow Freight Lines,* 193 F.2d 979 (5th Cir. 1952), are civil contempt cases, and absolutely irrelevant to a consideration of a statute governing criminal contempt. In *In Re Winn-Dixie Stores,* 386 F.2d 309 (5th Cir. 1967), there is no mention of § 3692. *Mitchell v. Barbee Lumber Co.,* 35 F.R.D. 544 (S.D. Miss. 1964); *In Re Piccinini,* 35 F.R.D. 548 (W.D. Pa. 1964); *United States v. Robinson,* 449 F.2d 925 (9th Cir. 1971); and *Internat'l Longshoremen's Ass'n, supra,*[3] concern contempts in matters not properly labelled "labor disputes." Moreover, the respondent inaccurately cites three cases as having arisen from 10(l) injunctive proceedings: *Madden, supra; N.L.R.B. v. Red Arrow, supra;* and *In Re Winn-Dixie,*

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[2]See full discussion in brief of *Union Nacional de Trabajadores, amicus curiae,* pp. 29-36.

[3]See Pet. Brief, p. 28, n. 32.

supra. All those contempts arose during enforcement proceedings governed by § 10(h).

Respondent has also ignored the suggestion of the Fifth Circuit in 1969 that there was "much on the Brotherhood's side," *Brotherhood of Firemen v. United States,* 411 F.2d 312, 316-17 (5th Cir. 1969), with respect to the jury trial right in the criminal context.

This Court is urged to undertake the same fresh and persuasive analysis reflected in the First Circuit's thorough opinion in *In Re Union Nacional de Trabajadores,* 502 F.2d 117 (1st Cir. 1974).

C. The Jury Trial of § 3692 Serves An Important Purpose Where Criminal Contempt Is Alleged.

That a jury trial serves an important role in the criminal contempt process is settled law. *Bloom v. Illinois,* 391 U.S. 194 (1968), and *Cheff v. Schnackenberg,* 384 U.S. 373 (1966), Pet. Brief, p. 11-14. It is "infused with a national policy," *In Re Union Nacional de Trabajadores, supra,* 502 F.2d at 118, where a labor dispute is the source of the injunction.[4]

Contrary to the impression respondent seeks to create, Res. Brief, pp. 19-25, the jury trial right of § 3692 would not interfere with the effective administration of the National Labor Relations Act. Where an injunction is obtained, normal enforcement power

[4]See, also, Brief of the Labor Committee of the National Lawyers Guild, *amicus curiae,* p. 6-12, and Brief for the Unions, *amici curiae,* p. 3-9.

utilizes the civil contempt remedy.[5] The need for speedy enforcement is fully met by the civil contempt powers.

D. Respondent Has Retreated From Reliance On Statutory Authority for Its Restrictive Interpretation of § 3692.

Pet. Brief, pp. 29-38, extensively considered whether § 10(l) or § 10(h) expressly withdrew the jury trial provisions of § 3692 from contempts of injunctions issued pursuant to National Labor Relations Board proceedings. Respondent devotes seven lines to these issues, Res. Brief, p. 20-21, and two footnotes, n. 15 and n. 22.[6]

The respondent, in abandoning the statutory reliance, retreats to two related arguments: (1) the legislative history of the 1947 amendments creating § 10(l) indicates Congress intended to exempt all 10(l) proceedings from the provisions of Norris-LaGuardia, and (2) the statutory and legislative history of the enactment of § 3692 in 1948 supports the assertion that Congress meant to restrict its application to injunctions issued under the auspices of the Norris-LaGuardia Act.

1. There is no substantial legislative history that "Congress did indeed intend to free proceedings

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[5] *Shillitani v. United States*, 384 U.S. 364, 371, n. 9 (1966); and Bartosic & Lanoff, *Escalating the Struggles Against Taft-Hartley Contemnors*, 39 U. Chi. L. Rev. 255, 262 (1972).

[6] N. 22 reflects a confused analysis. Respondent asserts that § 10(h) must be applicable to injunctions issued under § 10(l), because § 10(j) does not contain the language on exemption found in § 10(l), ("notwithstanding any other provision of law"). There is simply no authority for such a proposition. See Pet. Brief, n. 38.

under Section 10(l) from the requirements of the Norris-LaGuardia Act . . ." Res. Brief, p. 24. Respondent relies heavily upon an isolated comment by Senator Ball during Congressional debate in 1947. Res. Brief, p. 24-25. Petitioners have previously indicated the inconclusiveness of Senator Ball's statement to establish the proposition advanced by respondent. Pet. Brief, p. 38, n. 51. That Senator Ball's ironic statement is meaningless at best can be seen from a comparison of the concurrent debates surrounding § 208(b), 29 U.S.C. § 178, of the Labor-Management Relations Act, 1947, which provides:

> "In any case, provisions of sections 101-115 of this title shall not be applicable."

In that case, Congress unequivocally exempted all injunctions issued during national emergency disputes from all Norris-LaGuardia provisions. The First Circuit noted that if Congress knew how to completely remove Norris-LaGuardia restrictions in one section of the 1947 Act, it could easily have done so in any other section. *In Re Union Nacional de Trabajadores, supra,* 502 F.2d at 121. The debates themselves revealed that Congress specifically intended to exempt Norris-LaGuardia from injunctions issued in national emergency disputes. I & II, *Legislative History of the Labor-Management Relations Act, 1947* (N.L.R.B. 1948), 291, 420, 568, 832, 868, and 1606.[7] In 1947,

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[7] *Cf.* proposed § 12(c) of H.R. 3020, I, *Legislative History of the Labor Management Relations Act, 1947, supra,* at 206, which would have exempted certain injunctions from all Norris-LaGuardia provisions. This proposal was rejected.

Congress knew which parts of the Labor-Management Relations Act it wished to exempt from all Norris-LaGuardia provisions: §§ 206-210, 29 U.S.C. §§ 176-180. There is no evidence that Congress intended to exempt § 10(l) from all Norris-LaGuardia provisions.[8]

2. The enactment of § 3692 in 1948 does not reveal that Congress intended to limit that section's applicability to Norris-LaGuardia contempts. Respondent asserts that § 3692 must be restricted to those contempts of injunctions subject to the limitations imposed by Norris-LaGuardia, because the reviser's notes did not positively assert that "significant change in coverage [had been intended]." Res. Brief, p. 26. This is tantamount to a suggestion that this Court should presume that a new statute is limited to the scope of its predecessor unless the revisers or Congress positively indicate to the contrary. Such a method of statutory construction is not permissible.[9] Moreover the revisers did specifically indicate that a change was made in the coverage of the section: "Reference to specific sections of the Norris-LaGuardia Act (sections 101-115 of title 29, U.S.C.

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[8] *Cf.* an analogous Federal statute where Norris-LaGuardia provisions were also clearly made totally inapplicable: 42 U.S.C. § 2000e-5(h).

[9] Respondent claims that wherever "a repealed provision was expanded," the revisers took care to note this. Res. Brief, p. 26, citing 18 U.S.C. § 4162. The weakness of respondent's argument is demonstrated by noting that the revisers noted specifically where changes were meant to include only wording or similar technical drafting. See, *e.g.*, §§ 3189, 3191, 3194, and 4243. If the revisers had intended any changes in phraseology to have been limited to such, they would have explicitly stated this.

1940 ed.) were eliminated."[10] The revisers' notes indicate an attempt to broaden the scope of the old Norris-LaGuardia provisions, not, as respondent claims, an attempt to limit their scope.

E. Congressional Debate Surrounding the Civil Rights Act of 1957 Is Irrelevant and Inconclusive.

This Court has consistently refused to consider such legislative statements in determining the meaning of prior enactments. *Nat'l Woodwork Mfrs. Ass'n v. Nat'l Labor Relations Board,* 386 U.S. 612, 639, n. 34 (1967); and *Securities Exchange Commission v. Capital Gains Research Bureau,* 375 U.S. 180, 199-200 (1963). These statements inserted in the Congressional Record are unreliable in view of their self-serving origin[11] and contradicted by other Congressmen.[12]

Furthermore, debate surrounding the 1959 Labor-Management Reporting and Disclosure Act, and in particular, § 608, 29 U.S.C. § 528, indicates that as late as that date, Congressmen believed that the contempt provisions of Norris-LaGuardia still prevailed.[13]

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[10]See, Pet. Brief, n. 61, which discusses another statutory change, indicating an intent by Congress to broaden the statutory scope.

[11]See brief of *Union Nacional de Trabajadores, amicus curiae,* fn. at p. 21-22.

[12]103 Cong. Rec. 8536-8537, 8684 (Rep. Smith).

[13]105 Cong. Rec. 6730 (Senator Ervin).

II

THE RESPONDENT HAS MISCONCEIVED THE PRINCIPLES UNDERLYING THE JURY ENTITLEMENT OF ARTICLE III, § 2 AND AMENDMENT VI.

A. The Right To A Jury Trial Is Assured Wherever The Matter Tried Is Criminal Contempt.

Respondent's argument relies upon the premise that it is imprisonment per se, rather than the criminal nature of the proceedings, which determines whether a jury trial is required under Art. III, § 2 or Amend. VI. Res. Brief, p. 35-42. This is erroneous, for it is the criminal nature of the proceedings which invokes the rights guaranteed by the Constitution.

This Court has consistently judged the applicability of Art. III, § 2 and Amend. VI on the basis of whether the proceeding is criminal or otherwise.[14] *Callan v. Wilson,* 127 U.S. 540, 549-50 (1888); *District of Columbia v. Colts,* 282 U.S. 63, 72-73 (1930); and *District of Columbia v. Clawans,* 300 U.S. 617, 624-25 (1937). In addition, these cases teach that certain offenses characterized as "petty" do not rise to the level of crimes within the constitutional sense. Wherever the proceeding is criminal and the offense is serious, a jury trial is guaranteed. See *Codispoti v. Pennsylvania,* 418 U.S. 506, 511-13, 516 (1974).

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[14]No jury trial is granted in immigration proceedings, *United States ex rel. Turner v. Williams,* 194 U.S. 289, 290 (1904); in trials of alien spies, *Ex Parte Quirin,* 317 U.S. 1, 38-46 (1942); in recovery of civil penalties, *United States v. Regan,* 232 U.S. 37, 47-48 (1919); and in juvenile proceedings, *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971).

For those reasons, alleged criminal contemnors are also entitled to a jury trial. When this Court held that a jury was constitutionally requisite in serious criminal contempts, it stated:

> "Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. * * *
>
> "Given that criminal contempt is a crime in every fundamental respect, the question is whether it is a crime to which the jury trial provisions of the Constitution apply. We hold that is, primarily because in terms of those considerations which make the right to a jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes." *Bloom v. Illinois,* 391 U.S. 194 at 201-202 (1968).[15]

Respondents argues that "the risk of arbitrary deprivation of personl liberty" is the touchstone for the right of jury trial. Res. Brief, p. 36, 38. It is not surprising that this Court employed terms descriptive of the deprivation suffered by natural persons and the protection offered them by the jury trial right. No precedential case before this Court had a corporation as a party. The abuses to which this Court referred are, however, equally applicable to entities as they are to natural persons: "arbitrary in its nature and liable to abuse," *Ex parte Terry,* 128 U.S. 289,

[15]Indeed, in that case, this Court cited cases where corporations, including unions, had been cited for contempt. *Toledo Newspaper Co. v. United States,* 247 U.S. 402 (1918); *United States v. United Mine Workers,* 330 U.S. 258 (1947); and cases cited at n. 3 of *Bloom.*

313 (1888); and "arbitrary exercise of official power," *Bloom v. Illinois, supra,* 391 U.S. at 202. Moreover, as to a corporate entity a jury is "an inestimable safeguard against the corrupt or overzealous prosecutor, and against the complacent, biased, or eccentric judge," *Duncan v. Louisiana,* 391 U.S. 145, 156 (1968).

Contrary to respondent's position, neither Art. III, § 2 nor Amend. VI is limited in application to natural persons.[16] Corporations have asserted rights guaranteed by these constitutional provisions in this Court. *Platt v. Minnesota Mining & Mfg. Co.,* 376 U.S. 240, 245 (1964). Respondent's position is simply untenable.

B. Respondent's Suggestion That a Flexible Standard Be Adopted With Respect to the Seriousness of Fines Is Unworkable.

Respondent's position is that whether a contempt is serious or petty must depend on "such factors as the economic resources of the defendant and the amount of economic damage flowing from the offense." Res. Brief, pp. 15-16. This position is incorrect for several reasons.

First, this formula would impose the "nature of the offense" test, which this Court has eschewed since *District of Columbia v. Colts,* 282 U.S. 63 (1930). See *Baldwin v. New York,* 399 U.S. 66, 69, n. 6 (1970). Respondent would permit one test as to imprisonment (the penalty imposed), and another as to fines (the

[16] Art. III, § 2 speaks of "the trial of all crimes," while Amend. VI speaks of the "accused." *Cf.* 18 U.S.C. § 3692. ("accused").

nature of the offense) to determine the seriousness of the offense for jury trial entitlement.

The impracticality of such a scheme is reflected in this Court's discussion of the nature of fines in *United States v. United Mine Workers, supra,* 330 U.S. at 302-306. The multitude of factors in determining the appropriate fine in those circumstances suggests the enormous difficulty involved in deciding whether jury entitlement exists in a particular case. No trial court could adequately weigh such factors prior to a trial to determine whether a jury was requisite. *Cf. Argersinger v. Hamlin,* 407 U.S. 25, 40 (1972) (jury must be impanelled if judge contemplates incarceration). And no trial court would want to engage in the extensive fact-finding requisite to support its failure to grant a jury after imposing substantial fines.[17]

Finally, this proposal confuses the Eighth Amendment's protection against excessive fines with that of jury entitlement under Art. III, § 2 and Amend. VI.[18] The right to a jury trial arises, not from the excessive penalty, but rather, from the seriousness of the crime as measured by the penalty imposed.

For these reasons, this Court chose the Congressional standard of 18 U.S.C. § 1 as a dividing line

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[17]In this case, the trial court asked for certain pre-sentence information, solely for the purposes of determining the amount of sentence, and summarily rejected the contention that the evidence was relevant for jury purposes. G.A. 46a-48a.

[18]The discussion in *United States v. United Mine Workers, supra,* concerned the excessiveness of the fine imposed. "Finally, over the years in the Federal system, there has been a recurring necessity to set aside punishments for criminal contempt as either unauthorized by statute or too harsh." *Bloom v. Illinois, supra,* 391 U.S. at 206.

between serious and petty crime.[19] This further reflects the need for "objective criteria reflecting the seriousness with which society regards the offense." *Baldwin v. New York,* 399 U.S. 66, 68 (1970).

Contrary to respondent's understanding, this line reflects the limits imposed by most states as to contempt penalties. See Pet. Brief, n. 19.[20] In California, where this action arose, contemnors may not be fined more than $500, whether the contempt is brought under the relevant civil or penal provisions.[21]

Only under the Federal system, where the penalty for criminal contempt has not been so limited, does the problem exist of developing an approximate dividing line with respect to either imprisonment or fine. Neither are the civil penalties emphasized by respondent relevant. Res. Brief, p. 46-49. The distinction between civil penalties and criminal punishment is plain. *Shillitani v. United States, supra.*

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[19]The genealogy of this dividing line was noted in *Codispoti v. Pennsylvania, supra,* 418 U.S. at 512, n. 4. Suffice it to say that the case before the Court does not involve the more difficult issue of imposing such a line through the due process clause of the Fourteenth Amendment upon the states. Rather, this involves those factors which impelled this Court in *Cheff v. Schnackenberg, supra,* 384 U.S. at 379-380, to implement the 18 U.S.C. § 1 dividing line "in the exercise of the Court's supervisory power."

[20]Indeed, this Court has recognized that "[l]imitations of the maximum penalties for criminal contempt are common in the States." *Bloom v. Illinois, supra,* 391 U.S. at 206, n. 8.

[21]California Code of Civil Procedure § 1218 and California Penal Code §§ 166 and 19 impose this absolute limit.

C. The Penalties Imposed Upon Local 70 Reflect A Serious Offense.

Respondent now argues that in any case, the penalties imposed upon Local 70 were not serious enough to warrant the impanelling of a jury. This a complete reversal of position from that argued in the trial court. In the respondent's formal submission to the trial court prior to the imposition of fines, respondent asserted:

> "Although petitioner [Mr. Hoffman, respondent herein] considers the contumacious conduct of respondents as having been of extremely serious nature, and has given great consideration to recommending the imposition of both fines and imprisonment for the individual respondents, he is presently of the view that the authority and dignity of the court can as well be vindicated by the imposition of substantial fines only." J.A. 47.

In oral argument, attorney Milo Price stated respondent's position:

> "Your Honor, the petitioner considers the violation of the Act here, absent (sic) orders of this Court, as having been extremely serious in nature. This is not a minor frolic engaged by the unions. This was a deliberate course of conduct, well planned, well defined, and petitioner feels that the sanctions for it and for the transgressions encouraged should be substantial . . ." J.A. 76.

The trial court concluded that it wished to impose criminal penalties which would "be not too heavy nor too light." G.A. 45a. The court imposed the full

$25,000 fine requested by Respondent as to Local 70 although it suspended a portion.

The respondent's assertion to the contrary conflicts with the record that it established in the trial court below.[22]

In summary, the principles established from *Bloom v. Illinois, supra,* to *Codispoti v. Pennsylvania, supra,* are applicable both to unincorporated associations and to the imposition of fines. Neither logic nor practicality dictates an opposite result.

Dated, March 14, 1975.

Respectfully submitted,
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[22]Respondent asserts that a trial court should consider "the amount of loss suffered by the firms which were victims of the repeated boycott activity . . ." Res. Brief, p. 54. Such alleged damage should be the subject of the statutory remedy provided, 29 U.S.C. § 187 (suit for violation of secondary boycott provisions), or for imposition of the relevant civil penalties. G.A. 52a and 53a.